

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CITY OF BLOOMINGTON, McLEAN COUNTY, ILLINOIS,
an Illinois Municipal Corporation,

Petitioner,

vs.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

T12-0132

Petition of the City of Bloomington, an Illinois Municipal Corporation, to (1) authorize the establishment of a new highway-rail grade crossing, including bike trail and sidewalk, at a point where the extension of Hershey Road will cross the existing railway and (2) authorize the use of Grade Crossing Protection Funds to close an existing uncontrolled grade crossing east of the Hershey Road alignment and install warning devices for the proposed Hershey Road grade crossing, all at the point where the south extension of Hershey Road will cross Norfolk Southern Railway Company's track (Milepost SP-371.4, Gibson City-Farmdale Line, Illinois Division) in the City of Bloomington, County of McLean, State of Illinois.

MOTION TO DISMISS

NOW COMES Respondent Norfolk Southern Railway Company (hereinafter "Norfolk Southern"), by and through its counsel of record, Neil F. Flynn & Associates, and for its Motion To Dismiss states as follows:

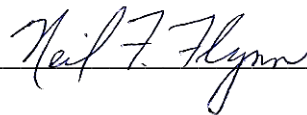
1. Respondent Norfolk Southern is a rail carrier and railroad subject to the jurisdiction of the Illinois Commerce Commission (hereinafter "Commission");
2. In its Petition, the City of Bloomington seeks an Order of the Commission authorizing the establishment of a new highway-rail grade crossing, including bike trail and sidewalk, at a point where the extension of Hershey Road will cross Norfolk Southern's existing track. (Milepost SP-371.4, Gibson City-Farmdale Line, Illinois Division)

3. In order to construct and open the proposed new at-grade crossing, it will be necessary for the City of Bloomington to take by condemnation certain property owned by Respondent Norfolk Southern.
4. Section 10-5-10(g) of the Eminent Domain Act provides in pertinent part:

“...No property... belonging to a railroad or other public utility subject to the jurisdiction of the Illinois Commerce Commission may be taken or damaged...without the prior approval of the Illinois Commerce Commission...” 735 ILCS 30/10-5-10(g) (formerly 735 ILCS 5/7-102)
5. To date, Petitioner City of Bloomington has not yet filed a condemnation action to obtain all necessary property from Respondent Norfolk Southern, nor has the City of Bloomington sought or obtained prior Commission approval to do so.

WHEREFORE, Respondent Norfolk Southern prays that the City of Bloomington's Petition be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in cursive script, reading "Neil F. Flynn", is written over a horizontal line.

Neil F. Flynn
One of the Attorneys for Respondent
Norfolk Southern Railway Company

Dated: September 14, 2012

Neil F. Flynn & Associates
Attorneys at Law
600 South Second Street, Suite 102
Springfield, IL 62704
(217) 544-0261 - Fax: (217) 544-0688